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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

BILL NUMBER: House Bill 5292 (as introduced)
TOPIC: Property and Casualty Guaranty Association
SPONSOR: Representative Leslie Mortimer
CO-SPONSORS: Representatives Gaffney and Hune
COMMITTEE: Committee on Insurance
Analysis Done: October 20, 2005

POSITION

The Office of Financial and Insurance Services opposes this legislation.

PROBLEM/BACKGROUND

The National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Guaranty Funds (NCIGF) have been working to identify problems raised by recent large insolvencies in the property and casualty insurance industry. As a result of their research the parties involved with Michigan's Chapter 79 and 81 have determined some changes need to be made to the Insurance Code to solve some of the problems brought to light by these groups.

OFIS and interested parties from the Michigan Property and Casualty Guaranty Association (MPCGA) have been working over the past year to rewrite Michigan's Insurance code to solve some of those problems.

DESCRIPTION OF BILL

Section 7918(4) is added to give the Guaranty Fund the absolute right to obtain custody and control of all claims information of an insolvent insurer. If the fund must sue to gain custody of the claims information and prevails in court, the courts will award cost, expenses, and reasonable attorney fees to the fund.

Section 7921(a) amends the date on which the liquidation order is considered final as the date on which all appeals of the finding of insolvency are exhausted, or if not appealed, the date the order was issued.

Section 7925(2)(a) states a refund of unearned premium in an amount less than \$50.00 will not be made.

Section 7925(3) revises the definition of a covered claim to not include any amount due any insurer, insurance pool, underwriting association, health maintenance organization, health care corporation, or self-insurer as subrogation recoveries, contribution, or other obligation. Section 7925(4) defines covered claims as not including obligations for any first party or third party claim by or against an insured whose net worth exceeds \$25,000,000.00. Section 7925(6) defines covered claims as not including a claim for personal protection insurance benefits under Section 3107 that is in excess of \$5,000,000.00.

Section 7925 adds the definitions for "consumer price index," "control," "health care corporation," and "self-insurer."

Section 7931(3) addresses the issue of claims against the fund from self-insured entities.

Section 7945 adds Administrative Tribunals to the entities that may have jurisdiction over an insolvent insurer.

Under Chapter 81, Section 8111(2), representatives of any guarantee fund have been added to the list of "third parties" that the commissioner may advise of the existence of a supervision order.

Section 8124(4) is removed and removes the guaranty fund's standing to appear in a court proceeding concerning the liquidation of an insurer. However Section 8124A(1) restores the standing and allows them to intervene as a party as a matter of right and to participate in any court proceeding concerning the rehabilitation or liquidation of an insurer if the fund is or may become liable to act. Section 8124(2) allows the a Guaranty Fund, if qualified to intervene, to request that the court convene a case management conference with the liquidator and all interested guaranty funds with topics specified.

Section 8125A requires a receiver to continue any reporting requirements for workers' compensation data.

Section 8133A states that any collateral held by the insurer or receiver in order to secure the obligations of a policyholder under a large deductible agreement not be considered an asset of the estate and will be administered by the receiver, as per the requirements of this section. This language gives guaranty funds the same rights and benefits that the insolvent insurer would have received under the large deductible arrangements.

Section 8134(1) requires the liquidator to make application to the court for approval of a proposal to make early access disbursements to a guaranty fund having obligations because of the insolvency. This action must be taken within 120 days of the final determination of insolvency or the guaranty fund may file the application with the court.

Section 8134(2) states when a reserve for uncovered claims under Section 8142(2) is appropriate, the amount of estate assets to be reserved for those claims will be a percentage of the uncovered claims under section 8134(2).

Section 8134(6) adds language to restrict the liquidator from offsetting the amount to be disbursed to a guaranty fund by any special or statutory deposit or any other asset of the insolvent insurer, except for payment made to satisfy the fund's claims.

SUMMARY OF ARGUMENTS

Pro

The proposed legislation solves many of the problems identified by both the NCIGF and the MPCGA. Current statutes have been revised to give the guaranty funds more access to information concerning claims of liquidated companies, clearly defines what should not be a covered claim during a liquidation proceeding, addresses the issue of self-insured claims against the fund, clarifies procedures when large deductible plans are involved, and gives the funds more rights to be heard when the liquidation proceedings are in court.

Con

In Section 8125A the requirement that the receiver continue to report losses for the liquidated company is problematic. Often the receiver has to maintain a computer system, leases, and personnel at a large expense and it ties the receiver's hands in terms of relocating and downsizing locations because of the system requirements. Raising expenses lowers potential distributions to other creditors including the guaranty fund. After the liquidation, the receiver isn't responsible for the payment of claims, the guaranty fund is. After the liquidation, the guaranty fund should provide any claims history to the policyholder upon request, not the receiver.

Section 8124A(1) and (2) give the guaranty funds more oversight of the estate management which is under the purview of the Commissioner. To give the guaranty fund standing could delay reimbursement to claimants and could result in the fund fighting the Commissioner as liquidator in court. These sections give the guaranty fund too much power to make decisions regarding management of the liquidated insurer. The Commissioner is responsible to all creditors, not just the guarantee funds and as such, the Commissioner may make decisions that the funds don't like. It would extend the process to allow the funds to then go to court if they don't like what the receiver is doing.

The rewrite of the current section 8134 creates a question of management of the estate between the guaranty funds and all other creditors. It allows the fund to determine the reserves used in making distributions. If they are not happy with the Commissioner's or receiver's determination they will file their own. Again, the Commissioner has to make determinations on behalf of all creditors, not just the guarantee funds.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services: None known

Budgetary:
Revenue:
Comments:

(b) To the Department of Labor and Economic Growth: None

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

None known

ANY OTHER PERTINENT INFORMATION

The language in this proposed legislation is based partly on the NAIC model, as well as the language proposed by the NCIGF. OFIS staff has been working on this legislation for a period of time with the MPCGA, although not all issues have been resolved. The

NAIC is in the process of developing new model law language to address some of the same situations, so this effort may be a bit premature.

ADMINISTRATIVE RULES IMPACT

The OFIS has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.



Linda A. Watters
Commissioner

10-20-05

Date